of the Criminal Procedure Code the accused is most certainly entitled to have copies of documents which are specified in the charge. But the accused cannot be expected to be given access to all documents whatsoever taken by the police during investigation. In respect of application made in the course of the trial the materials or documents asked for must be relevant to the issues for adjudication.

The last question is whether it was proper for the appellate Judge to make a fresh order after setting aside the order under section 51 of the Criminal Procedure Code which he held had not been properly applied for. Why the appellate Judge decided to do so is explained in that part of his judgment which reads as follows:–

"Be that as it may, having perused the appeal record, I am of the view this is a proper case where I should exercise the Court's power of revision in order to ensure that justice is not only done but seen to be done. To my mind the charge as it stands is insufficient to enable the applicants to properly prepare their defence."

He also gave the reasons why it would be just and proper for the prosecution to furnish the accused with photostat copies of documents specifically referred to in the charge.

Was the appellate Judge here invoking his "inherent jurisdiction" referred to in *Ganga Ram* v. *Habib Ullah & Anor*[9] to call upon a person present in Court (in this case the Deputy Public Prosecutor) to produce the document? In this case the appellate Judge had already ruled that the respondent's application was not properly made under section 51 of the Criminal Procedure Code and therefore the order of the learned President should be set aside. The only question is whether it was a proper exercise of the revisionary powers of the appellate Judge.

Having regard to our view of section 51 of the Criminal Procedure Code the terms of the order made by the learned Judge would seem to be a contradiction in terms. We agree with the learned Deputy that what the learned Judge did was incorrect; it was neither an alteration nor a reversal of the order made by the learned President and therefore not authorised under section 316(c) of the Criminal Procedure Code. We are of the view therefore that the order of the learned Judge to produce the documents was not a proper exercise of his revisionary powers.

Therefore our answers to the questions posed are as follows:–

(1) The answer to question No. 1 is in the affirmative.

(2) The answer to questions No. 2 and No. 3 is in the affirmative with a qualification, that is, an accused person has a right to apply for a summons under section 51 of the Criminal Procedure Code but the issue of the summons is at the discretion of the Court before which the enquiry or trial is heard or pending. Where the application is made before the commencement of enquiry or trial as a general rule the documents or materials must be documents or materials specified or referred to in the charge. A general demand for unspecified materials or documents should not be entertained. Where the application is made in the course of inquiry or trial the court has to consider the question of relevancy to the issues for adjudication.

(3) Since the answer to question No. 2 is in the affirmative, question No. 4 need not be answered.

(4) The answer to question No. 5 is in the negative not because the contents of the documents formed part of the evidence of the prosecution but because the order made by the appellate Judge was not a proper exercise of his revisionary powers.

Questions answered.

Solicitors: *Joseph & Sons; Morris Edgar & Clough Thuraisingam.*

CHEO LEAN HOW v. FOCK FONG LOOI

[S.C. (Lee Hun Hoe C.J. (Borneo), Seah & Mohamed Azmi S.C.JJ.) February 7 & June 29, 1985]

[Kuala Lumpur – Federal Court Civil Appeal No. 283 of 1983]

Land Law – Temporary Occupation Licence – House built on land held under T.O.L. – Sale of house – Occupation by way of revocable licence – T.O.L. replaced by qualified title – Continued occupation by way of revocable licence – Whether licence irrevocable – Transfer by owner of land to another person – Revocation of licence – Reasonable notice.

Equity – Equitable estoppel – Irrevocable licence – Civil Law Act, 1956, s. 3(3).

In this case Too Sun the husband of the appellant was

issued with a Temporary Occupation Licence to occupy state land in Perak. A dwelling house was erected on the land by Cheng Yen, with the approval or without the objection of Too Sun. Subsequently the dwelling house was sold to Loke Seng, the father of the respondent, since deceased. This transaction was reduced into writing and witnessed by Too Sun. The temporary occupation licence issued to Too Sun was later replaced by a qualified title. The respondent continued to live in the dwelling house on the land. Subsequently the land was transferred by Too Sun to his wife, the appellant. She gave the respondent fourteen days to vacate the dwelling house and the land. When the respondent failed to do so, the appellant brought an action against the respondent in the Magistrate's Court alleging that he was a trespasser. The Magistrate thought the respondent was a trespasser and ordered him to deliver vacant possession of the land to the appellant. On appeal to the High Court, the learned Judge reversed the decision holding, on the facts, that the respondent had an irrevocable licence coupled with an interest to remain in the dwelling house and on the land. The appellant appealed.

Held: (1) the sale of the dwelling house on the land was not illegal or void. The occupation by Loke Seng and the respondent may be regarded as by way of a revocable licence only without any interest in the state land;

(2) after the replacement of the T.O.L. by qualified title, the occupation of the respondent continued to remain by way of revocable licence only without any interest in the land;

(3) the respondent's claim that the licence was irrevocable failed and the appellant was at liberty after the transfer of the land to her to revoke the licence and to put an end to the continued existence of the respondent's occupation of the dwelling house and the land;

(4) the notice of two weeks given to the respondent to vacate from the dwelling house was inadequate but as more than 17 months had elapsed before the case was heard, a reasonable time had elapsed. The revocable licence of the respondent had therefore been duly determined and judgment should be entered in favour of the appellant.

Cases referred to:

(1) *Canadian Pacific Railway Company* v. *The King* [1931] A.C. 414.
(2) *Hee Cheng* v. *Krishnan* [1955] M.L.J. 103.
(3) *Papoo* v. *Veeriah* [1965] 1 M.L.J. 127.
(4) *Paruvathy d/o Murugiah* v. *Krishnan s/o Doraisamy* [1983] 2 M.L.J. 121.
(5) *Thomas* v. *Sorrell* (1673) 124 E.R. 1098.
(6) *Errington* v. *Errington* [1952] 1 All E.R. 149, 154.
(7) *Ramsden* v. *Dyson* (1866-67) L.R. 1 H.L. 129.
(8) *Inwards* v. *Baker* [1965] 1 All E.R. 446.
(9) *Siew Soon Wah & Ors.* v. *Yong Tong Hong* [1973] 1 M.L.J. 133, 135.
(10) *Lala Beni Ram* v. *Kundan Lal* [1898-99] 26 I.A. 58, 63.
(11) *Cornish* v. *Stubbs* (1870) L.R. 5 C.P. 334.
(12) *Mellor* v. *Watkins* (1874) L.R. 9 Q.B. 400.
(13) *Minister of Health* v. *Bellotti* [1944] 1 All E.R. 238.
(14) *Tool Metal Manufacturing Co Ltd* v. *Tungsten Electric Co. Ltd.* [1955] 1 W.L.R. 761, 797

SUPREME COURT.

Lal Harcharan Singh (*J.S. Olikh* with him) for the appellant.

Lim Seong Chun for the respondent.

Cur. Adv. Vult.

Seah S.C.J. (delivering the Judgment of the Court). The salient facts of this case are reasonably clear and may be summarised under three main heads. Following the method adopted by Privy Council in the case of *Canadian Pacific Railway Company* v. *The King*[1] we would deal with the questions involved separately.

(1) *Temporary Occupation Licence*

In 1954 or thereabout, Too Sun, the husband of the appellant (plaintiff in the Court below) was issued with a Temporary occupation licence LMS No. A317 Lot 98, Kampong Baru, Slim River, Perak to occupy State land. A dwelling house was erected by Chung Yen on a portion of the State land (hereinafter referred to as the disputed land). It must be assumed that the house was put up either with the approval or without the objection of Too Sun on account of his friendship with Chung Yen. In 1957 Chung Yen decided to leave the district and sold the dwelling house to Loke Seng, the father of the respondent (defendant in the Court below) since deceased, for the sum of $1,000.00. This transaction was reduced into writing and was witnessed by Too Sun (Ex. P6).

This temporary occupation licence granted to Too Sun was governed by the Land Code which had since been replaced by the National Land Code 1965. Rule 41 of the Land Rules stipulated that "No licence of the temporary occupation of State land shall be transferable". Rule 41 was the subject of judicial interpretation in the case of *Hee Cheng* v. *Krishnan.*[2] In that case the plaintiff claimed specific performance or alternatively for damages for a breach of contract entered into between him and the defendant for the purchase of a house built upon a piece of State land held under a temporary occupation licence. Thomson J. held that the alleged contract was in fact an attempt to sell and to purchase defendant's rights under the T.O.L. and being contrary to Rule 41 of the Land Rules was therefore unlawful by reason of section 24 of the then Contracts (Malay States) Ordinance 1950. This decision was cited by Good J. in *Papoo* v. *Veeriah*[3] and applied by the Federal Court in the case of *Paruvathy d/o Murugiah* v. *Krishnan*

s/o Doraisamy.[4] In the latter case, Salleh Abas C.J. (Malaya) (as he then was) observed at page 123 that

"we do not agree with Mr. Sri Ram's submission that the principle of equitable estoppel does not apply against a T'O.L. holder ... Whether the principle applies or not in this case depends entirely upon whether the respondent relied upon the appellant's request and nothing else, we are of the view that this principle should apply ...."

In our opinion, *Hee Cheng* case can be distinguished from the facts of the present case in that Too Sun, the holder of the temporary occupation licence did not sell the dwelling house erected on State land held under temporary licence to Loke Seng. It was Chung Yen who sold the building to Loke Seng. Too Sun merely signed Ex. P6 as a witness and he was not a party to the transaction. Besides, Ex. P6 made it abundantly clear that the sale was in respect of the dwelling house put up by Cheng Yun only. To quote what Good J. said in *Papoo's case* "if people choose to deal in building erected on State land which is the subject of a temporary occupation licence, if they acquire such buildings for valuable consideration, they do so at their own risk because they know, or they ought to know and they must be deemed to know, that such buildings cannot be the subject of private transactions unless in the absence of any contract to the contrary to which the State Government may be a party, such buildings are clearly the property of the State". In our opinion, Ex. P6 was not against Rule 41 of the Land Rules and was therefore not illegal or void.

After the execution of Ex. P6 it was not in dispute that Loke Seng went into occupation of the dwelling house. He also made use of and enjoyed the disputed land. This continued for a great number of years until his death in 1963. After his death the respondent remained in occupation of the dwelling house and the disputed land without objection or interruption from Too Sun. Since this occupation by Loke Seng and the respondent was known to and possibly acquiesced in by Too Sun, in these circumstances, we are of the opinion that it would be impossible to treat Loke Seng or the respondent as a trespasser. In our opinion, as no rent was paid by Loke Seng or the respondent nor was any demand for payment of rent ever made by Too Sun, the occupation would be regarded as having been made with the knowledge and leave of Too Sun.

During this period it was common ground that Too Sun was the holder of a temporary occupation licence issued by the authority. In *Papoo's case* (*supra*) Good J. had this to say about the T.O.L.:

"A temporary occupation licence is exactly what the name implies. It is a licence to occupy (State Land) and nothing more. As I have said in a recent judgment in Civil Suit No. 326 of 1957: 'It is perfectly clear that if the holder of a temporary occupation licence chooses to put up a building on the State land which he occupies by virtue of that licence, he takes the risk of losing what he has put into that building'."

To quote Vaughan C.J. in *Thomas* v. *Sorrell:*[5]

"A dispensation or licence properly passeth no interest, nor alters or transfers property in anything, but only makes an action lawful, which without it had been unlawful."

This passage was cited by Denning L.J. in *Errington* v. *Errington.*[6] In our opinion, this passage from Vaughan C.J. aptly describes the law governing a temporary occupation licence issued under the former Land Code or the National Land Code 1965.

Since it was made abundantly clear in Ex. P6 that Chung Yen was only selling the dwelling house to Loke Seng, the latter knew, or ought to know or must be deemed to have known, that the dwelling house was built on State land subject to a temporary occupation licence and that Too Sun was the holder of the T.O.L. As a holder of a T.O.L., Too Sun could not legally confer any right which he did not possess in law or in equity. Therefore, in the context of this case, we are of the opinion that such an occupation by Loke Seng and the respondent may be regarded as by way of a revocable licence only without any interest on the State land.

(2) *Qualified Title*

In 1974 the temporary occupation licence was replaced by a qualified title described as Suratan Hakmilik Sementara No. HS(M) Slim 81/73 for P.T. No. 122 in Kampong Baru, Slim River in the Mukim of Slim, State of Perak and Too Sun became the registered owner of the State land formerly held under T.O.L. L.M.S. No. A317 Lot 98, Kampong Baru, Slim River, Perak. The respondent alleged that he contributed towards part payment of the land premium and other outgoings when the qualified title was granted to Too Sun. The trial Magistrate held that these alleged payments had not been established and there was no cross-appeal by the respondent against this finding. It must be taken to have been accepted by the

respondent. Now, what happened after the qualified title was registered in the name of Too Sun? According to the pleading and the evidence adduced at the trial, the respondent continued to live in the dwelling house without any interruption from Too Sun. He did not pay or tender any rent nor did Too Sun demand any rent from him. There was no evidence that Too Sun and the respondent entered into any new arrangement regarding his occupation, use and enjoyment of the dwelling house. In short, the respondent continued to reside in the dwelling house as he had done before when Too Sun was the holder of the T.O.L. From a consideration of the foregoing facts we draw the conclusion that the occupation of the respondent continued to remain by way of a revocable licence only without any interest on the land.

(3) *Transfer by Too Sun to the appellant*

In 1979 Too Sun transferred the whole land including the disputed land to his wife, the appellant. Since there was no evidence that they had been living apart, we think we are justified to assume the occupation of the dwelling house and the disputed land by Loke Seng and the respondent was known to the appellant. In other words, the appellant had actual notice of this when she took the transfer in 1979. Shortly after this, the appellant on 7.4.80 (Ex. P5) instructed solicitors to send a letter to the respondent demanding that he vacate the dwelling house and the disputed land within fourteen days, failing which legal action would be taken for his ejectment. When the respondent failed to leave after the expiration of the prescribed period, the appellant took out a plaint in the Magistrate's Court on 20.4.80 against the respondent alleging *inter alia*, that he was a trespasser.

The Magistrate thought that the respondent was a trespasser and ordered him to deliver up vacant possession of the disputed land to the appellant. On appeal to the High Court, the learned judge reversed this decision holding on the facts, that the respondent had an irrevocable licence coupled with an interest to remain on the dwelling house and the disputed land. This was an appeal against the judgment of the High Court. The problem in this case is to decide what was the true legal relationship between the parties and particularly between the appellant and the respondent on April 20, 1980.

We would consider the defence of the respondent. It is the contention of the respondent that he had with the consent and encouragement of the appellant's husband, Too Sun expended large sums of money in the purchase of the dwelling house as well as in developing it. He therefore claims to have acquired an irrevocable licence coupled with an interest to remain in the dwelling house and the disputed land indefinitely. In support of this proposition reliance was placed on the case of *Ramsden* v. *Dyson*.[7] The principle of equity on the subject was succinctly stated by Lord Kingsdown at page 170:

> "The rule of law applicable to the case appears to me to be this: If a man, under a verbal agreement with a landlord for a certain interest in land, or, what amounts to the same thing, under an expectation, created or encouraged by the landlord, that he shall have a certain interest, takes possession of such land, with the consent of the landlord, and upon the faith of such promise or expectation, with the knowledge of the landlord, and without objection by him, lays out money upon the land, a Court of equity will compel the landlord to give effect to such promise or expectation. This was the principle of the decision in *Gregory* v. *Mighell* 34 E.R. Chancery 341 and, as I conceive, is open to no doubt."

This principle of equitable estoppel, as it is sometimes called, was explained and applied by Lord Denning M.R. in *Inwards* v. *Baker*[8] at p. 448/449.

> "... in this case, even though there is no binding contract to grant any particular interest to the licensee, nevertheless the court can look at the circumstances and see whether there is an equity arising out of the expenditure of money. All that is necessary is that the licensee should, at the request or with the encouragement of the landlord, have spent the money in the expectation of being allowed to stay there. If so, the court will not allow that expectation to be defeated where it would be inequitable so to do ..."

This passage was cited by Viscount Dilhorne in giving the opinion of the Privy Council in the case of *Siew Soon Wah & Ors.* v. *Yong Tong Hong*.[9]

On the facts of this case, we have no difficulty in coming to the conclusion that the respondent had failed to discharge the onus of proof. First, it was common ground that it was Chung Yen who erected the dwelling house on the disputed land and not the respondent. Secondly, it was the respondent's father, Loke Seng who purchased the dwelling house from Chung Yen. Thirdly, Ex P6 made it very clear that the sale was in respect of the dwelling house only. By so limiting both Chung Yen and Loke Seng knew or ought to know or must be deemed to know that the dwelling house was built on State land and that Too Sun

was the holder of the T.O.L. Fourthly, the respondent had not adduced any evidence how the dwelling house was put up by Chung Yen on the disputed land. All that the respondent could produce at the trial appear to be that the dwelling house was erected with the knowledge of and without any objection from Too Sun that after the execution of Ex. P6 Loke Seng went into occupation of the dwelling house and this fact was known to Too Sun. After the death of Loke Seng, the respondent remained to occupy the dwelling house without any interruption from Too Sun. The respondent continued to occupy the dwelling house even after qualified title was issued to Too Sun in 1974. Attempt was made to prove that the respondent paid his share of the land premium and other outgoings when the qualified title was issued to Too Sun in 1974 but this was rejected by the trial Magistrate and there was no cross-appeal against this finding. In short, the respondent had failed to establish that after the qualified title was registered in the name of Too Sun, he had expended money in the dwelling house at the request of or with the encouragement of Too Sun in the expectation that he would be allowed to remain there.

In order to raise the equitable estoppel against Too Sun it was incumbent, in our opinion, upon the respondent to adduce evidence to prove that a new agreement had been entered whereby the revocable licence had been converted to an irrevocable licence coupled with an interest after Too Sun was granted with a qualified title and became the registered owner of the land [see *Lala Beni Ram* v. *Kundan Lall*[10] and *Canadian Pacific Railway Co.* v. *The King (supra)*]. This the respondent failed to do. Upon the facts of the present case we can find no foundation for the application of the doctrine of equitable estoppel against Too Sun or the appellant. There was no mistaken belief by Chung Yen, Loke Seng or the respondent as to the ownership of the disputed land when it was held under a T.O.L. There was no conduct on the part of Too Sun which induced Chung Yen to put up the dwelling house and/or Loke Seng to buy it in the belief that rights in perpetuity would be acquired. There was nothing upon which to ground any estoppel. For these reasons we hold that equitable estoppel had not been established against Too Sun. It naturally followed that none was proved against the appellant in the absence of special circumstances to use a phrase of Lord Cranworth in *Ramsden's* case at 142.

We are of the opinion that the respondent's claim that the licence was irrevocable failed and that the appellant was at liberty to revoke the licence and so put an end to the continued existence of the respondent's occupation of the dwelling house and the disputed land.

Now, the general proposition at common law would appear to be that a licensee whose licence is revocable is entitled to reasonable notice of revocation. For this proposition reference may be made to *Cornish* v. *Stubbs*[11] and *Mellor* v. *Watkins*[12] in the latter of which cases Blackburn J. states that a person giving a revocable licence "is bound to give the licensee reasonable notice" [see *Canadian Pacific Railway case* (*supra*) at 432].

In *Minister of Health* v. *Bellotti*[13] the headnote reads:

> "The respondent was an evacuee from Gibraltar and occupied premises under licence from the Ministry of Health. The respondent was a licensee for valuable consideration in respect of the premises which he occupied and the licence was extended to allow him to live in the flat, to have furniture of his own and to have his wife and family there in addition to certain other amenities. Differences arose between the respondent and officials of the Ministry and the respondent was given a week's notice to quit the premises he occupied. The respondent failed to leave on the expiration of the notice and after an attempt to eject him, proceedings were taken in the County Court to obtain an order for possession. It was contended that the notice was invalid on the ground that the time given to vacate the premises was unreasonably short and therefore, the licence was not effectively revoked".

We would quote a passage of Goddard L.J. which summarised the judgment of the Court of Appeal at p. 245:

> "If a licensor determines the licence, he is bound to give a reasonable time within which the determination is to take effect, so that the licensee can collect himself, his property or whatever it may be, from the premises in respect of which the licence has been withdrawn. He is bound to give a reasonable time and, if he does not and takes proceedings before the reasonable time has elapsed, he loses his action. But although he may not give a reasonable time, it seems to me that that does not put an end to the withdrawal of the licence. The licence has been withdrawn and the withdrawal becomes effective when a reasonable time has expired. The fact that he may have limited a time which, as in this case, was unreasonable, and in this case wholly unreasonable, does not justify the licensee in sitting down and doing nothing. He should have begun to make arrangements, or attempted to make arrangements to remove himself, and by the time the proceedings had started on September 22, he had had ample time."

The *Canadian Pacific Railway* case was consi-

dered by the Court of Appeal in the *Bellotti case* where Lord Greene M.R. said that the only proposition of general application which he could extract from the *Canadian Pacific Railway case* was to be found at page 432 which reads:

"Whether any and what restrictions exist on the power of a licensor to determine a revocable licence must, their Lordships think, depend upon the circumstances of each case."

This observation of the Master of the Rolls was respectfully agreed to by Lord Cohen in the House of Lords in the case of *Tool Metal Manufacturing Co. Ltd.* v. *Tungsten Electric Co. Ltd.*[14] at page 797. Earlier on in the same page, Lord Cohen said:

"In the *Canadian Railway case* the Crown had, at any rate, as regards one section, expressly stated that they would name a date by which the poles and wires must be removed. Moreover, a paramount public interest was involved. In these circumstances I cannot see that the facts are so analogous that the decision can be safely taken as a sure guide in the present case."

At page 766 of *Tool Metal Manufacturing* case Viscount Simonds said:

"My Lords, it is undoubtedly the fact that the *Canadian Pacific Railway case* decided that what I have called a "dated notice" was required in that case to terminate an existing licence and that the Crown, the licensor, had in that case the duty and the risk of fixing a reasonable period of notice, but I must observe that not only was the equitable principle, which was recognized by the *Hughes Case* (1877) 2 App. Cas. 439 not invoked, but Lord Russell of Killowen in delivering the opinion of the Board expressly disclaimed any reference to that or any other equitable principle. The relevant problem there was whether a licence to occupy land by placing telegraph poles thereon had been revoked by the institution of proceedings by the Crown, and the question was what term in regard to revocation should be implied in the licence which the Crown was assumed to have granted. I have no doubt that the question is analogous to that which we have to decide in this case, for the implication of a term as to revocation, upon which the licence is silent, must depend on what is fair and reasonable between the parties. The court will be guided by the same principle in the one case and the other. The passage which I cited from Bowen L.J.'s judgment in the *Birmingham* case (1888) 40 Ch. 268 at 286 ended with these words: 'That is the principle to be applied. I will not say that it is not a principle that was recognized by courts of law as well as of equity. It is not necessary to consider how far it was always a principle of common law.". Nor, my Lords, is it necessary to-day, but in the House of Justice it would be difficult to distinguish between the equitable principle recognized in *Hughes case* and the rule well established at common law long before the fusion of law and equity that a licensor must give a reasonable notice to determine a licence. It was this rule ,which was applied in the *Canadian Pacific Railway case* and in applying it, Lord Russell of Killowen said: 'Whether any and what restrictions exist on the power of a licensor to determine a revocable licence must, their Lordships think, depend upon the circumstances of each case'. And, as I read the decision, it was the circumstances of that case and nothing else, certainly not any general rule, which led him to say that 'it will be for the Crown to determine the licence by service of a notice the sufficiency of which, if called in question, will have to be decided, upon proper evidence, in subsequent proceedings. It will be for the Crown, at its risk, to fix the length of notice.' The circumstances of that case were very unusual, and I do not doubt that they fully justified the rule being applied in that way ... I find nothing in the *Canadian Pacific Railway case* which precludes me from reaching the conclusion which I have already stated, viz. that the appellants gave sufficient notice that the suspensory period was at an end, and allowed enough time to elapse before seeking to enforce their rights."

Like Viscount Simonds and Lord Cohen we would adopt the law stated by Goddard L.J. in *Bellotti* case as being applicable to the facts of this case. It is conceded that there is no written law in Malaysia dealing with this subject and in the event of conflict or variance between the common law and the rules of equity with reference to the same matter, the rules of equity shall prevail [see section 3(2) of the Civil Law Act 1956 (Revised 1972 as Laws of Malaysia Act 67)].

Now, what are the facts? It was not disputed that the appellant gave a 14-day notice to the respondent to quit the dwelling house which he and and his family had been living since 1957 and whose occupation must have been known to by the appellant. This notice was dated April 7, 1980 and when the respondent failed to leave after the expiration of the prescribed period, the appellant took out a plaint against the respondent on April 25, 1980. It was quite plain that the time specified for the respondent to move out was grossly inadequate. Nor did the appellant give to the respondent reasonable time to vacate the dwelling house after the expiration of the stipulated period. That, however, was not the end of the matter. The next question to consider was whether a reasonable time had elapsed at the time when the action came up for hearing? According to the record the first time the case came up for mention was on July 10, 1980 and it was fixed for hearing on October 30, 1980. At the request of counsel for the appellant it was re-scheduled to February 26, 1981. After several adjournments the case was eventually heard on September 24, 1981, and judgment of the trial Magistrate was given on November 3, 1982. In other words, more than 14 months had elapsed after close of pleadings and approximately 17 months following the suit when the action was taken. On these facts, we are satisfied that a reasonable time had elapsed at the time when the case was heard on September 9, 1981.

The appeal is hereby allowed.

The result of the appeal may now be stated. It succeeds in part and fails in part. It succeeds insofar as we are of the opinion that no irrevocable licence coupled with an interest existed and that no equitable estoppel had been established in favour of the respondent. But it fails inasmuch as we are of the opinion that the respondent was not a trespasser. It follows that neither the order of the trial Magistrate nor the order of the High Court can stand. The order of the High Court should be discharged and the order of the trial Magistrate should be varied as hereafter indicated.

The revocable licence of the defendant had been duly determined and judgment is entered in favour of the plaintiff. The defendant is ordered to deliver up vacant possession of that one half portion of the land held under Suratan Hakmilik Sementara No. HS(M) Slim 81/73 for P.T. No. 122 in Kampong Baru, Slim River in the Mukim of Slim, State of Perak to the plaintiff within six months from the date hereof. Having regard to the circumstances of this case, we order that each party to pay his/her own costs here and in the courts below. The deposit of $500.00 to be refunded to the appellant.

Order accordingly.

Solicitors: *J.S. Olikh & Co.; Lim Seong Chun & Co.*

MOSBERT BERHAD (IN LIQUIDATION) v. STELLA D'CRUZ

[S.C. (Abdul Hamid C.J. (Malaya), Wan Suleiman & Seah. S.C.JJ.) March 13 & July 13, 1985]

[Johore Bahru – Federal Court Civil Appeal No. 108 of 1984]

Company Law – Action against company in liquidation – Leave of court to be given on inter partes summons – Leave given on ex parte summons – Official Receiver heard on summons to set aside order – No substantial injustice caused – Whether leave should be granted – Companies Act, 1965, ss. 226(3) & 355.

Land Law – Private caveat – Claim to registrable interest in portion of land – Caveat may be on whole land provided effect limited to portion of land – Caveat removed – National Land Code, s. 322 & 417.

This was an appeal against the decision of the judge of the High Court who gave leave to the respondent to prosecute her claim against the appellant, a company in liquidation on an *ex parte* application pursuant to section 226(3) of the Companies Act. It was also argued that the private caveat lodged by the respondent was defective or void in that it purported to caveat the whole of the property when the caveator was only claiming an interest in a small portion thereof.

Held: (1) the application under section 226(3) of the Companies Act should be made *inter partes* so that the summons could be served on the Official Receiver who should be heard before the discretion of the Court is exercised;

(2) in this case although leave was given on an *ex parte* application, the Official Receiver was represented and heard on the application to set aside the order. No substantial injustice had therefore been caused to the appellant;

(3) the Court will give the applicant leave if his claim cannot be dealt with adequately in the winding up or if satisfied that the remedy he seeks cannot be given to him in a winding up proceedings. The learned Judge in this case had applied the correct test in giving the respondent leave to commence proceedings in respect of her claim to the private lot of land;

(4) it was plain that that the private caveat lodged in this case was intended to forbid the registration of any dealing affecting the whole land and was not confined to the private lot in respect of which the claim was made. The respondent was not entitled to lodge such a caveat when she is claiming a particular interest in a portion of the land. The order extending the validity of the private caveat lodged by the respondent should therefore be set aside and an order made that the caveat be removed from the register.

Cases referred to:

(1) *Mosbert Berhad (In Liquidation)* v. *Chatib bin Kari* [1985] 1 M.L.J. 162.
(2) *Western & Brazilian Telegraph Co.* v. *Bibby* (1880) 42 L.T. 821.
(3) *Re Cuthbert Lead Smelting Co.* (1886) W.N. 84.
(4) *Tee Chin Yong* v. *Ernest Jeff* [1963] M.L.J. 118.
(5) *Woo Yok Wan* v. *Loo Pek Chee* [1975] 1 M.L.J. 156.
(6) *Pok Kew Chai* v. *Yeoh Thian Seng & Ors.* [1975] 1 M.L.J. 220.
(7) *Vangedaselam* v. *Mahadevan & Anor.* [1976] 2 M.L.J. 161.
(8) *Tan Thean Choo* v. *Cheah Kah Seong & Anor.* [1977] 2 M.L.J. 106.
(9) *Eng Mee Yong & Ors.* v. *Letchumanan* [1979] 2 M.L.J. 212.

SUPREME COURT.

P. Suppiah for the appellants.
G. Puthucheary for the respondent.
Siti Zaleha binti Sheikh Abubakar for the Official Receiver.

Cur. Adv. Vult.

Seah S.C.J. (delivering the Judgment of the Court): The material facts which give rise to this